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No. 89-1855

In The
Supreme Court of the United States

October Term, 1989

ST. JOSEPH'S HOSPITAL AND MEDICAL CENTER,
Petitioner,

v.

MARICOPA COUNTY,
Respondent.

Opposition to Petition For
Writ of Certiorari
To The
Arizona Court of Appeals

Brief for Respondent

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QUESTION PRESENTED

Whether Arizona State statutes and regulations which mandate that income and resources of all members of the household be counted to determine eligibility for medical care at County expense constitute a taking of a private hospital's property without just compensation or a denial of the hospital's right to due process.

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STATUTES, REGULATIONS AND CONSTITUTIONAL PROVISIONS

In addition to the statutes and constitutional provisions cited by the Petitioner, other statutes and regulations which the case involves are: Arizona

Revised Statutes Annotated (A.R.S) §§ 11-291, 11-297.01 and Arizona Compilation of Rules and Regulations (A.C.R.R.) R9-22-307. Copies are attached in the appendix. In addition, copies of A.R.S. § 11-297, defining indigency, and the case at bar, St. Joseph's Hospital v. Maricopa County, 163 Ariz. 132, 786 P.2d 983 (App. 1989), are attached.

STATEMENT OF THE CASE

This case basically involves a complaint about eligibility guidelines for free indigent health care benefits at government expense. The complaining party, however, is not the patient, who was found to be ineligible, but the private hospital which treated him for nearly two months and sought to be paid by Maricopa County for treatment rendered to the ineligible patient, under the legal fiction that all of his care was "emergency" care. The

patient, Donald Neu, had been suffering from terminal cancer. He had been hospitalized previously at St. Joseph's Hospital as well.

St. Joseph's Hospital argued that Mr. Neu was a legally defined indigent, and therefore was eligible for free medical care under emergency circumstances pursuant to A.R.S. § 11-297.01 (see appendix). According to A.R.S. § 11-297(B)(2)[1] (see appendix), an "indigent" was a person who had no more than $3,333.00 annual income (husband and wife) and who:

> does not have resources of all persons in the household, including but not limited to equity in a house or car, with a net worth in excess of thirty-thousand dollars, with no more than five-thousand dollars cash or other liquid assets.

In the case of the patient's household, it was undisputed that the

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[1] Now amended.

household owned resources which were vastly in excess of the resource limits. These included part ownership of a shopping center, a home with equity several times the total allowable limit, clear title to a Cadillac, a jeep, a truck, a house trailer and a joint checking account containing $1,200.00. The patient, Mr. Neu, claimed that the bulk of this was his wife's separate property, and that he was indigent. The Neus married in 1971 and the listed property was acquired thereafter. The Neus continued to live together in one household through the years from 1971 until Mr. Neu's hospitalization. Because the Neu household assets exceeded the statutory limits for indigency, Maricopa County found Mr. Neu ineligible for care at its expense.

St. Joseph's sued Maricopa under A.R.S. § 11-297.01, seeking reimbursement for care rendered to Mr. Neu over

approximately a two month period. The trial court granted summary judgment in favor of Maricopa, finding that the Neus were statutorily ineligible for care at County expense. Division One, Department "D" of the Arizona Court of Appeals affirmed the trial court ruling, holding that the statute which defines indigency, A.R.S. § 11-297, rendered both Mr. Neu and his wife ineligible based upon the household's assets, which included Mrs. Neu's separate property. The Court also held that the statute, A.R.S. § 11-297, does not violate due process and does not constitute an unconstitutional taking of property. Finally, the Court held that St. Joseph's was not entitled to restitution since the County had no duty to provide care in the first place. Only the constitutional issues (taking of property

and due process) are pursued by the Petitioner in this Court.

SUMMARY OF ARGUMENT

Respondent Maricopa County is required by Arizona statutes (A.R.S. §§ 11-291, 297, 297.01 -- copies attached in appendix) to provide free medical care to legally defined indigents. "Indigents" are defined by A.R.S. § 11-297(B)(2) as households having income less than $3,333.00 per year, for a married couple, and resources below $30,000 in value.

The Neu household, consisting of the patient and his wife, had resources well in excess of $30,000. As noted above, this included a partial interest in a shopping center, an expensive home, three vehicles with clear title, a trailer and a checking account, among other things. Therefore, under the terms of A.R.S. § 11-297(B)(2), the Neu household fails to qualify as

"indigent" and, therefore, Maricopa County is not responsible for paying Mr. Neu's hospital bill. The bill, totaling approximately $50,000, was incurred over a period of two months while Mr. Neu was treated for cancer.

Even if Maricopa County were responsible for Mr. Neu's care, as an indigent, it would not be liable for much, if any, of his care at St. Joseph's, since A.R.S. § 11-297.01(B) only requires payment by a county for emergency care rendered to a legally defined indigent.

There was no taking of private property without just compensation. In fact, there was no taking whatsoever. The hospital merely treated a patient and took its chances on being paid, just as hospitals do each day when they accept patients who are not eligible for indigent

health care, or who do not have adequate health insurance.

The Supreme Court, the Arizona Court of Appeals and the Petitioner recognize that lines must be drawn to determine eligibility for social benefit programs. Village of Belle Terre, et al. v. Borass, et al., 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974). That is simply what the Arizona Legislature did in drafting A.R.S. § 11-297(B)(2). The line was drawn based upon a rational basis and for good reasons. The Petitioner does not like where it was drawn, since it does not allow for payment of its bill. However, dissatisfaction with where the line is drawn is different from suffering a taking of property. There was no taking in this case, nor was there a duty to treat or pay for treatment to this middle class patient.

Likewise, there was no violation of due process. The statute and administrative regulations are designed for a rational purpose and they are permissible. Line-drawing for social benefits and the use of the category of "households" are widely accepted concepts in a large number of local, state and federal benefit programs. United States Department of Agriculture, et al. v. Murry, et al., 413 U.S. 508, 93 S.Ct. 2832, 37 L.Ed.2d 767 (1973).

There are no constitutional bases for granting a Petition for Certiorari. Consequently, the petition should be denied.

ARGUMENT

The Petitioner bases its request for review on two grounds, taking of private property and due process. These grounds are discussed below. Based upon the

discussion which follows, Respondent Maricopa County asserts that the petition should be denied.

I. The Provisions Of A.R.S. A.R.S. § 11-297(B)(2) Under Which Maricopa County Denied St. Joseph's Hospital's Claim, Do Not Create An Unconstitutional Taking Of Private Property Without Just Compensation.

The Petitioner, St. Joseph's Hospital (St. Joseph's), asserts at page four of its petition that it is not challenging the eligibility standards themselves. Nor does it object to the general concept of "drawing a line" where a patient qualifies or is ineligible for care at County expense. Yet it is these same statutory eligibility guidelines in A.R.S. § 11-297(B)(2) and regulatory guidelines in A.C.R.R. R9-22-307 (see appendix) that clearly exclude the Neus from eligibility. Therefore, it is incorrect to state that

the Petitioner is not attacking the actual eligibility standards.

St. Joseph's characterizes the Arizona statutory eligibility standards as if they were somehow designed with Donald Neu specifically in mind, in order to determine him ineligible for care at Maricopa County's expense and to deny the hospital its rightful payment of his bill. The reality is the opposite, however. The Legislature of the State of Arizona, and the Arizona Department of Health Services, through administrative regulations, created a number of criteria for determining whether patients qualified as legally indigent or not. One of these criteria was whether or not a "household" earned a certain amount of income or possessed a certain level of resources. A.R.S. § 11-297(B)(2). In the case of Donald Neu, his wife's claimed separate property made the

household's income and resources well in excess of the allowable eligibility limit, where the Legislature decided to draw the line. The same would have resulted had Donald Neu owned separate property, or had Mr. and Mrs. Neu owned all of the resources which they possessed on an equal basis; both of them (the household) would have been ineligible since they were not indigent. They were not indigent under statute (A.R.S. § 11-297), nor were they indigent in fact.

On the other hand, had the totality of the household's income and resources met the statutory standards, it would not have mattered whether the income and resources were separate or community property, nor would it matter if one person in the household earned all of the money or held all of the property. What matters under the eligibility statute is the <u>amount</u> held

by the household, not who earns it or controls it.

St. Joseph's characterizes the Neu family's ineligibility for having excess assets at page five as a presumption that Mr. Neu was "able to pay the hospital on the basis of property he did not own and could not control, and which was legally beyond the reach of St. Joseph's." This inaccurately slants the facts to suit the hospital. Donald Neu was not eligible. Neither was his wife. The household had clear title to several vehicles and recreational items like a trailer, as well as an expensive house and a shopping center. These are not the kind of people (the "poorest of the poor") that the Legislature had in mind to pay for when it adopted A.R.S. § 11-297 and its income limits ($3,300.00 annual married couple's income) and asset limits ($30,000.00).

St. Joseph's cites Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 98 S.Ct. 2646, 59 L.Ed.2d 631 (1978), at page four of the petition, for the proposition that there is no single "set formula" for determining when justice and fairness call for government payment for economic injuries. Obviously, the analysis depends on the particular circumstances in each case. Clearly the circumstances in the case of the Neus do not mandate taxpayer payment of a medical bill incurred over two months by an upper middle class or higher economic class family.

The Supreme Court in Penn Central, supra at 59 L.Ed. 648, stated:

> A "taking" may more readily be found when the interference with property can be characterized as physical invasion by government [citations omitted] than when interference arises from some public program adjusting the

benefits and burdens of economic life to promote the common good.

The Court held that there was no taking of property when the New York City landmarks law barred Grand Central Station Terminal from building a high-rise over the terminal. Likewise, there was no taking in the case at bar, as the Court of Appeals for the State of Arizona has ruled.

St. Joseph's Hospital, as a "non-profit" institution seems unusually preoccupied with its finances. Yet the fact that the Legislature allows private hospitals to operate as "non-profit" corporations, with preferential tax treatment is another policy line that the Legislature claims to draw between profit making businesses, which are held to one standard, and not for-profit businesses that are held to another. The fact that private hospitals are required to treat certain low income people who are not poor

enough to qualify for care at government expense is merely one of the conditions that goes with the otherwise favorable treatment they receive.

St. Joseph's complains at page three that the Court of Appeals was in error at pages 8-9 of its opinion when it spoke of the rational basis for the Legislature including a spouse's separate property in a household's property. Yet the Court recognized at page eight that:

> In some cases, spouses will no doubt decline to pay. It is not, however, irrational that the Legislature expect that those possessing sufficient separate assets will voluntarily pay for a spouse's necessary medical care. The system St. Joseph's proposes -- that separate assets be excluded -- would create an economic disincentive for those with adequate assets to provide for the health needs of an indigent spouse. This, apparently, is not the policy the Legislature has chosen to adopt.

The Court also noted at page six of the opinion that the Legislature recently

amended the statute in question to exclude the first $75,000.00 of a spouse's separate property from the indigency calculation:

> From this action, we can infer that the Legislature was aware of the County's policy to include all separate property in the calculation.
>
> * * *
>
> . . . the Legislature now clearly requires that a spouse's separate property -- albeit only that which exceeds $75,000.00 -- be included in the indigency calculation. The Legislature was obviously aware of community property principles when it first enacted § 11-297(B)(2). If it intended community property principles to temper the eligibility calculation, it could have expressly done so, as evidenced by the recent amendment.

St. Joseph's makes much of a presumed distinction between emergency and elective care arguing that it can exclude non-paying patients in the latter case, but that it must treat patients in the former case under the doctrine of Guerrero v. Copper

Queen Hospital, 112 Ariz. 104, 537 P.2d 1329 (1975). Maricopa County will ignore, for the moment, the question of how a two-month long hospital stay, followed by a discharge home, can all be emergency care. Beyond this, for all emergency patients whose income ($2,500.00 single; $3,330.00 married) or assets ($30,000.00) exceed the eligibility limits, private hospitals will still be required to treat these low income people with no real expectation of recovering their costs. Therefore, the distinction between the two classes is not that great in reality. It is puzzling to say that an emergency patient with indigency-qualifying resources of $29,999.00 is not involved in a taking, while a similar patient with $30,001 dollars in resources also is not involved in a taking. Under Guerrero v. Copper Queen Hospital, supra, St. Joseph's would be

compelled to treat both patients without regard to their ability to pay. Yet in the first case, the County would only be required to pay a reduced or discounted amount by statue (A.R.S. § 11-297; see appendix)[2], whereas in the second case the patient alone would be responsible for payment of his or her bill and would most probably be unable to pay even a portion of it. Either way, the hospital does not receive its full fee. Yet St. Joseph's is apparently untroubled by that "line drawing," but is upset at the well-off Neus being denied eligibility.

St. Joseph's states, inaccurately, that "the Court of Appeals has previously recognized the validity of the hospital's

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[2] In St. Joseph's Hospital v. Maricopa County, 138 Ariz. 127, 673 P.2d 325 (App. 1983), Judge Kleinschmidt, writing for the Court of Appeals, rejected St. Joseph's statutory interpretation that the hospital was entitled to its full billed rates, rather than the statutorily reduced rate.

taking argument," citing St. Joseph's Hospital and Medical Center v. Maricopa County, 130 Ariz. 239, 635 P.2d 527 (App. 1981). The hospital admits that then-Judge O'Connor, writing for the Court, found no taking with reduced statutory payment to hospitals. Yet it goes on to create the incorrect impression that the Court somehow implied that there was a taking under the circumstances described by the hospital in the instant case. This was not the case. In fact, the case at bar is the first of the line of hospital suits against Arizona's counties to rule on the constitutional taking issue, to the knowledge of Maricopa County. The passage referred to by St. Joseph's is dicta contained in a discussion of a Massachusetts case. It is not applicable here.

St. Joseph's also cites Pennell, et al. v. San Jose, et al., 485 U.S. 1, 108 S.Ct. 849 99 L.Ed.2d 1 (1988). However, the holding of that case supports Maricopa County's position. The Supreme Court ruled that the city's rent control ordinance was not facially unconstitutional. The ordinance had a "hardship to tenant" provision which affected whether a landlord could raise rent. The Court held that it was premature to find any taking, but that the ordinance did not violate the due process or equal protection clauses on its face. Moreover, the Court held that, in takings cases particularly, constitutionality of statutes should only be decided based upon the actual factual circumstances of each case. Finally, the Court held that "statutes regulating the economic relations of landlords and tenants are not per se takings," Pennell, supra, at

pages 854-858, quoting F.C.C. v. Florida Power Corp., 480 U.S. 245 107, S.Ct. 1107, 94 L.Ed.2d 282 (1987). Furthermore, the Court stated at pages 857-858:

> We have consistently affirmed that states have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails. (Citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982)).

The Petitioner cites Armstrong, et al. v. United States of America, 364 U.S. 40, 80 S.Ct. 1563, 4 L.Ed. 1554 (1960). That case involves a contractor for boats in a contract with the U.S. government. The Supreme Court held that materialmen had a lien on the boat hulls and had a compensable property interest.

However, while holding that there was a taking of liens, the Court also held at 80 S.Ct. 1568 that:

> It is true that not every destruction or injury to property by governmental action has been held to be a "taking" in the constitutional sense. Omnia Commercial Co. v. United States, 261 U.S. 502, 508-510, 43 S.Ct. 437, 67 L.Ed. 773 (1960).

The Court distinguished at page 1569 between a compensable taking and a mere "consequential incidence" of a valid regulatory measure. Finally, Justices Harlan, Frankfurter and Clark dissented, finding no taking.

As the Court of Appeals correctly stated at pages 9-10 of the opinion before this Court:

> In reality, St. Joseph's claim is that the indigency calculation together with the requirement that the hospital must treat all emergency patients constitutes a taking. The logical extension of this argument, as the County points out, is that anytime the hospital is unable to collect on its emergency bill the County (or State) must pay. (Emphasis added).

The Court of Appeals stated at page twelve, "obviously, these regulations are not tantamount to a complete condemnation of the hospital." Furthermore, it noted at page eleven that:

> The State's interest in the indigency calculation also is legitimate. As discussed earlier in this opinion, the Legislature must "draw lines" in order to allocate scarce resources.

Indeed, the Court notes at page thirteen:

> Here the regulations fall far short of that which is traditionally considered an unconstitutional taking. The State has not "invaded" the hospital but has simply required hospitals, as a condition of doing business in Arizona, to accept patients without regard to their ability to pay. The State or County will reimburse the hospital for the care extended to qualified indigents. For all patients who do not qualify as indigent, the hospital must look to the patient for reimbursement.

Based upon the foregoing, the Court of Appeals was correct in its interpretation

of the law, finding that no taking occurred.

II. There Was No Violation Of Due Process.

So long as they are rationally related to a legitimate state interest, economic regulations are acceptable, Pennell, et al. v. City of San Jose, et al., 485 U.S. 1, 108 S.Ct. 849 99 L.Ed.2d 1 (1988).

The Court of Appeals for the State of Arizona held in this case at 786 P.2d 986-987:

> We cannot agree that including a spouse's separate property as a legislative exercise in line-drawing lacks sufficient rationality to satisfy the requirements of due process. St. Joseph's argues that the inclusion of separate property creates an irrebuttable and irrational presumption that an indigent whose household assets exceed the limit can afford health care. In some cases, spouses will no doubt decline to pay. It is not, however, irrational that the legislature expect that those possessing sufficient separate assets will voluntarily pay for a spouse's necessary medical care the system

> St. Joseph's proposes -- that separate assets be excluded -- would create a disincentive for those with adequate assets to provide for the health needs of an indigent spouse. This, apparently, is not the policy the legislature has chosen to adopt.

The reasoning of the U.S. Supreme Court when speaking of equal protection is equally applicable to due process. Village of Belle Terre, et al. v. Boraas, et al., 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974):

> We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be " 'reasonable, not arbitrary' " (quoting F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 40 S.Ct. 560, 561, 64 L.Ed. 989) and bears "a rational relationship to a [permissible] state objective." Reed v. Reed, 404 U.S. 71, 76, 92 S.Ct. 251, 254, 30 L.Ed.2d 225.
>
> It is said, however, that if two unmarried people can constitute a "family," there is no reason why three or four may not. But every line drawn by a legislature

> leaves some out that might well have been included.[3] That exercise of discretion, however, is a legislative, not a judicial, function. 416 U.S. at 1540.

Just as the Legislature decided to give St. Joseph's certain tax advantages as a non-profit corporation, it also decided to "draw the line" at a certain level of resources for a household that would qualify or disqualify its members from eligibility. This has been done by the

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[3] Mr. Justice Holmes made the point a half century ago. "When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark." Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 41, 48 S.Ct. 423, 72 L.Ed.770 (dissenting opinion).

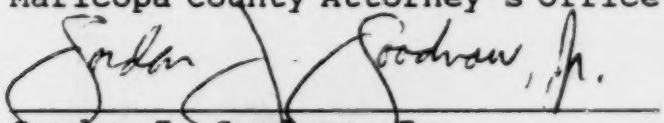
Legislature, as is its right. If St. Joseph's is unhappy with the result, its remedy is through the Legislature, not the Courts.

CONCLUSION

For the reasons set forth above, Maricopa urges the Court to deny the Petition for Certiorari filed by St. Joseph's Hospital.

Respectfully submitted,

Maricopa County Attorney's Office



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June 22, 1990

A P P E N D I X

OPINION BELOW

St. Joseph's Hospital and Medical Center, an Arizona corporation Plaintiff-Appellant, v. Maricopa County, a body politic, Defendant-Appellee.	No. 1 CA-CIV 88-047 Court of Appeals of Arizona Division 1, Department D. Sept. 7, 1989. Review Denied Feb. 26, 1990

Gammage & Burnham

by Richard B. Burnham, Curtis Ullman and Tracey L. Fletcher, Phoenix, for plaintiff-appellant.

Richard E. Romley, Maricopa County Atty.

by Gordon J. Goodnow, Jr., Deputy County Atty., Phoenix, for defendant-appellee.

OPINION

SHELLEY, Judge.

This case deals with the statute that defines indigency for purposes of public health assistance. We hold that the statute must be construed to render a patient ineligible for public assistance if his spouse owns separate property that exceeds the maximum set by the statute. We also hold that the statute, so construed, does not offend due process and does not work an unconstitutional taking of property.

BACKGROUND

Donald Neu was admitted as an emergency patient to St. Joseph's Hospital and Medical Center in April of 1985, and he remained hospitalized there for almost two months, incurring charges of over $50,000, of which he paid only a small part. St. Joseph's sought reimbursement of most of the balance due from Maricopa County, and the county refused to pay, claiming that Neu was not eligible for assistance.

For the purposes of this appeal, eligibility for county health care is determined under the version of A.R.S. § 11-297(B)(2) that was in effect in 1985. An indigent was then defined as a resident of the county whose income does not exceed a specific level, and

> [d]oes not have resources of all persons in the household, including but not limited to equity in a house or car, with a net worth in excess of thirty thousand dollars, with no more

> than five thousand dollars cash or other liquid assets.

A.R.S. § 11-297(B)(2) (1985 Ariz.Sess.Laws ch.316, § 5).[1]

Donald Neu's assets at the time of his hospitalization totaled substantially less than $30,000. His wife owned, as her sole and separate property, the home in which they lived, a part interest in a shopping center, and some automobiles. Because the value of Mrs. Neu's separate property exceeded the statutory maximum, Maricopa County determined that Donald Neu was not

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[1]A.R.S. § 11-297(b)(2) has been subsequently amended, increasing the limitation on resources from $30,000 to $50,000. 1986 Ariz.Sess.Laws ch. 380 § 2. The statute was again amended to add:
For an individual applicant who is married, any separate property of the applicant's spouse that does not exceed seventy-five thousand dollars shall not be included in determining the net worth of resources of the applicant. 1988 Ariz.Sess.Laws ch. 3, § 1. All textual references to A.R.S. § 11-297(B)(2) are to the 1985 version, unless otherwise noted.

"indigent" and was therefore not eligible for county health services. Maricopa County denied St. Joseph's claim for reimbursement of Donald Neu's hospitalization charges.

St. Joseph's sued the county on its claim, and the trial court, agreeing with the county's position, granted summary judgment in its favor.

On appeal, we consider the following questions:

A. Statutory Interpretation: Whether the separate property of a spouse can be considered in determining an individual's indigency pursuant to A.R.S. § 11-297(B)(2);

B. Due Process: Whether A.R.S. § 11-297(B)(2) is arbitrary and denies Donald Neu and St. Joseph's due process;

C. Unconstitutional Taking: Whether Maricopa County's failure to reimburse St. Joseph's for emergency services is an unconstitutional taking of private property without just compensation; and

D. Restitution: Whether St. Joseph's is entitled to recover from Maricopa County for services rendered under a theory of restitution.

We decide each of these issues in favor of Maricopa County.

THE SEPARATE PROPERTY OF A SPOUSE MAY BE CONSIDERED IN DETERMINING INDIGENCY

The parties agree that the medical expenses of a spouse are not collectable out of the separate property of the other spouse. Donald Neu's medical expenses were payable only out of the community income

and assets and Donald's separate property. For the purpose of this opinion, we accept that as the law.[2]

To be eligible for county health care benefits, a person must have income below a specified level and may not have "resources of all persons in the household" in excess of $30,000 with not more than $5,000 in cash or other liquid assets. A.R.S. § 11-297(B)(2). According to St. Joseph's, Arizona community property principles and public policy require that the phrase "resources of all persons in the household" in § 11-297(B)(2) be construed to include only assets actually available to the patient or his creditors. So construed,

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[2]We note that in California, a spouse's separate property may be reached to satisfy debts incurred for the other spouse's "necessaries of life." Cal.Civ.Code 5120.140(a)(1) (West Supp. 1989); In re Higgason's Marriage, 110 Cal.Rptr. 897, 10 Cal.3d 476, 516 P.2d 289 (1973). There is no comparable civil statute in Arizona.

the statute would require the county to reimburse the hospital for Neu's care.

[1] Eligibility statutes, the hospital argues, must be liberally construed with the dual purposes of delivering health care to those who cannot afford it and protecting a private hospital's right to receive reimbursement from the county. It cites a number of Arizona decisions for this premise. Although we acknowledge the underlying principle, none of the cases cited offer specific guidance in determining whether "resources of the household" must be construed to exclude a spouse's separate property when the plain language of A.R.S. § 11-297(B)(2) states otherwise.

[2] St. Joseph's also cites cases from other jurisdictions for the proposition that welfare statutes or regulations cannot preempt community property principles. See Harper v. New Mexico Dept.

of Human Services, 95 N.M. 471, 623 P.2d 985 (1980); Duran v. New Mexico Dept. of Human Services, 95 N.M. 196, 619 P.2d 1240 (App.1980); see also Purser v. Rahm, 104 Wash.2d 159, 702 P.2d 1196 (1985), cert. dismissed, 478 U.S. 1029, 107 S.Ct. 8, 92 L.Ed.2d 763 (1986), all holding that the uniform federal regulation, which was meant to apply to all states (both community and non-community property), had to be interpreted in the context of local law. These decisions shed little light on how the specific problem before us is to be resolved. In this case, the same legislature which has codified our community property law enacted A.R.S. § 11-297.

St. Joseph's also cites Herrera v. Health & Social Services, 92 N.M. 331, 587 P.2d 1342 (App.1978), which held that the word "income," as used in New Mexico's

eligibility statute, had to be interpreted in light of that state's community property law. The upshot was that since half the patient's income belonged to his wife under community property principles, he was under the maximum limit to qualify for public assistance. The problem is that in the context of the New Mexico statute, "income," was a more ambiguous term than the phrase, "resources of all persons in the household," with which we deal here.

In our opinion, this phrase, "resources of all persons in the household," unmistakably indicates an intent to include a spouse's separate property. No limitation of the type of resources -- separate or community -- is expressed in the statute. To construe it otherwise would require reading into the statute something that the legislature did not put there. This, we ought not do. City of

Phoenix, v. Donofrio, 99 Ariz. 130, 133, 407 P.2d 91, 93 (1965).

As noted in footnote 1 to this opinion, the legislature has recently amended the relevant statute to exempt the first $75,000 of the spouse's separate assets from the indigency calculation. From this action, we can infer that the legislature was aware of the county's policy to include all separate property in the calculation. The amendment does not reveal whether the county's policy comported with the legislature's intent under the old statute. The amendment is either a liberalization of the qualification guidelines, or a restriction of it, depending on one's viewpoint. In either case, the legislation now clearly requires that a spouse's separate property -- albeit only that which exceeds $75,000 -- be included in the indigency calculation. The legislature was

obviously aware of community property principles when it first enacted § 11-297(B)(2). If it intended community property principles to temper the eligibility calculation, it could have expressly done so, as evidenced by the recent amendment.

THE STATUTE DOES NOT OFFEND DUE PROCESS

We turn to St. Joseph's argument that the statute, as we construe it, is arbitrary, capricious, and violative of the due process clauses of the state and federal constitutions.

[3] Economic regulations need only be rationally related to a legitimate state interest. Arizona Downs v. Arizona Horseman's Found, 130 Ariz. 550, 555, 637 P.2d 1053, 1058 (1981). See also Comment, Economic Substantive Due Process in Arizona; A Survey, 20 Ariz.St.L.J. 327

(1988). St. Joseph's acknowledges this well-settled principle but claims that the inclusion of a spouse's separate property in the indigency calculation is irrational. We disagree.

[4] As St. Joseph's acknowledges, the legislature may and must draw financial eligibility lines somewhere. Under current eligibility criteria, a married couple can earn no more than $3,333 per year to qualify as indigent. This line is necessarily arbitrary, and, we realize, not realistically calculated to provide adequate health care for any but the poorest of the poor. Those who make more than $3,333 per year and cannot afford medical care are simply on their own, except in one respect -- if they present themselves at a hospital for emergency treatment, they cannot be turned away. See Thompson v. Sun

City Comm. Hosp., 141 Ariz. 597, 602, 688 P.2d 605, 610 (1984).

As we have already observed, St. Joseph's acknowledges that the legislature must "draw the line somewhere." St. Joseph's admits that the county is not required to reimburse the hospital for those emergency patients who do not qualify under the basic indigency guidelines. However, it challenges a detail in the legislature's drawing of the line when it contends that the legislature so unreasonably narrows its prospects of reimbursement as to violate due process when the legislature includes within the calculation of household assets available to the patient the separate property of the patient's spouse.

We cannot agree that including a spouse's separate property as a legislative exercise in line-drawing lacks sufficient rationality to satisfy the requirements of

due process. St. Joseph's argues that the inclusion of separate property creates an irrebuttable and irrational presumption that an indigent whose household assets exceed the limit can afford health care. In some cases, spouses will no doubt decline to pay. It is not, however, irrational that the legislature expect that those possessing sufficient separate assets will voluntarily pay for a spouse's necessary medical care. The system St. Joseph's proposes -- that separate assets be excluded -- would create a disincentive for those with adequate assets to provide for the health needs of an indigent spouse. This, apparently, is not the policy the legislature has chosen to adopt.

We turn to St. Joseph's next argument, that the system effects an unconstitutional taking of its property without just compensation.

THE STATUTE IS NOT AN UNCONSTITUTIONAL TAKING OF THE HOSPITAL'S PROPERTY

[5] St. Joseph's asserts that if a patient's indigency is determined by including the separate property of his spouse, which cannot be reached by a private hospital for the payment of hospital bills, the statute violates the "taking" clauses of the state and federal constitutions. It posits that the private property taken was the use of its services, facilities, and supplies, because, in Arizona, hospitals must provide emergency treatment regardless of the person's ability to pay. Thompson, 141 Ariz. at 602, 688 P.2d at 610. We disagree.

In reality, St. Joseph's claim is that the indigency calculation, together with the requirement that the hospital must treat all emergency patients, constitutes a taking. The logical extension of this

argument, as the county points out, is that any time the hospital is unable to collect on its emergency bill, the county (or state) must pay. St. Joseph's cites a mischievous footnote in St. Joseph's Hospital v. Maricopa County, 130 Ariz. 239, 635 P.2d 527 (App. 1981). That footnote referred to the suggestion made by a Massachusetts court in an earlier case, that if a hospital were requested to accept indigents and the public authorities refused to pay, such might constitute a taking. The suggestion was mere dicta.

Traditional eminent domain cases shed some light on the question. The typical eminent domain case involves the taking or regulation of real property which diminishes or destroys the value of that property to the owner and provides a direct benefit to the state. This case is atypical because the benefit -- emergency

health care -- inures to the patient directly. The only fiscal benefit the state enjoys is that it does not have to pay for the patient's care, unless the patient qualifies as indigent. There is some authority for the proposition that the government must pay for an unconstitutional taking of the property, even if it is another who derives the benefit. See Ivey v. United States, 88 F.Supp. 6, 8 (E.D.Tenn. 1950). In any event, the eminent domain analysis provided in property-use-regulation cases will be our guide.

As we stated in Corrigan v. City of Scottsdale, 149 Ariz. 553, 720 P.2d 528 (App. 1985) aff'd in relevant part, 149 Ariz. 538, 720 P.2d 513 (1986):

> There are no set formulas for determining at which point a regulation effects a taking of property . . . Rather a two step process is required. First, we

> must determine whether a legitimate state interest is substantially advanced by the ordinance at issue... Second, we focus on whether the ordinance denies the owner the economically viable use of the land . . . Ultimately the issue is whether the public at large, rather than a few landowners should bear the burden of an exercise of police power.

Id. 149 Ariz. at 560, 720 P.2d at 535 (citations omitted) (emphasis added). See also Ranch 57 v. City of Yuma, 152 Ariz. 218, 225-26, 731 P.2d 113, 120-21 (App.1986).

1. **Legitimate State Interest.**

In this case, we deal with the operation of two regulations that purportedly effect a taking. The first is a regulation developed by case law -- that hospitals are required to accept emergency patients without regard to their ability to pay. We think it is beyond discussion that this requirement advances a legitimate state interest. As our supreme court state in Thompson:

> 'If a person, seriously hurt, applies for . . . aid at an emergency ward . . . a refusal might well result in worsening the condition of the injured person, because of the time lost in a useless attempt to obtain medical aid.'

141 Ariz. at 602 n.3, 688 P.2d at 610 n.3 (citations omitted).

The state's interest in the indigency calculation also is legitimate. As discussed earlier in this opinion, the legislature must "draw lines" in order to allocate scarce resources. Including separate property in a household's resources for indigency purposes encourages family members to use their private resources to pay for medical care rather than allowing that burden to fall on public coffers. Therefore, we answer the first question posed in Corrigan affirmatively and turn to the second prong.

2. **Denial of Economic Use.**

Obviously, these regulations are not

tantamount to a complete condemnation of the hospital. The questions for the court then is whether the regulation is so severe as to deny the owner a reasonable economic use of the property and whether, in justice and fairness, the burden should fall on the hospital or on the public as a whole. Penn Central Transp. Co. v. City of New York, 438 U.S. 104, 123-24, 98 S.Ct. 2646, 2659, 57 L.Ed.2d 631, 648 (1978); Ranch 57, 152 Ariz. at 226-27, 731 P.2d at 121-22.

The Penn Central Court, noting that this determination is essentially an ad hoc factual inquiry, identified several significant factors. The first factor mentioned in Penn Central is the economic impact of the regulation on the plaintiff, particularly the extent that the regulation has interfered with the plaintiff's "investment-backed expectations." Id. 438 U.S. at 123-24, 98 S.Ct. at 2659. We have

absolutely nothing in the record to indicate the extent to which these regulations have effected St. Joseph's profitability. We know that St. Joseph's is unable to collect on the Neu account, totaling $50,006.45. We do not know what percentage of that figure is expected profit, nor do we know the impact these regulations have had on the hospital's overall profitability. Presumably, these "bad debts" are absorbed by the hospital as a cost of doing business and are ultimately passed on to the consumer. St. Joseph's has not provided us with adequate information upon which we could determine that it has suffered economic hardship tantamount to an unconstitutional taking.

3. **Governmental Action.**

Another factor mentioned in Penn Central is the "character of the governmental action." The Court explained:

> A 'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, . . . than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.

Id. (citation omitted). Here, the regulations fall far short of that which is traditionally considered an unconstitutional taking. The state has not "invaded" the hospital but has simply required hospitals, as a condition of doing business in Arizona, to accept emergency patients without regard to their ability to pay. The state or county will reimburse the hospital for the care extended to qualified indigents. For all patients who do not qualify as indigent, the hospital must look to the patient for reimbursement.

The regulation mandating emergency care benefits the common good (not only the poor or uninsured) because no one can be

denied emergency care for failing to provide proof of insurance or credit worthiness. The aspect of the regulation that denies families county-funded health care if one spouse possesses assets in excess of the statutory limit also benefits the common good, because it encourages families to pay for services rendered for family members rather than allowing that burden to fall on state coffers.

Having reviewed the relevant factors, we cannot find that, in the case of Donald Neu, this regulatory scheme amounts to an unconstitutional taking of the hospital's property.

RESTITUTION

[6] As a final issue for appeal, St. Joseph's contends it should be able to collect from the county on a theory of restitution. Appellant cites to sections 114 and 115 of the Restatement of

Restitution in support of its theory. The fatal flaw in appellant's argument is that for the county to be liable for Donald Neu's emergency care under a restitution theory, it must have had a duty to provide that care. St. Joseph's claims that the county's duty arises from A.R. S. § 11-291, which requires the county to provide medical care to the indigents. As we have determined earlier in this opinion, the county had no duty to provide care for Donald Neu, because he did not qualify as an indigent. Because the county had no duty, it is also not liable in restitution.

CONCLUSION

For the foregoing reasons, the decision of the trial court is affirmed.

KLEINSCHMIDT, P.J., and FIDEL, J., concur.

ARTICLE 7. MEDICAL FACILITIES AND CARE OF INDIGENTS

Cross References

Income tax deduction, nursing care institution costs, see §43-1062. Income tax exemption, maintaining person in nursing or supervisory care institution, see §43-1023.

§11-291. Hospitalization and medical care of indigent sick.

Text of section effective until October 2, 1983.

A. Except as provided in §36-183.01 and title 36, chapter 29, the board of supervisors has the sole and exclusive authority to provide for the hospitalization and medical care of the indigent sick in the county, including long-term care and home health services as defined in §46-151, paragraph 3, to indigent persons and indigent persons under the supervision of a county corrections

agency. Counties shall not be required to provide services specified in title 36, chapter 29 to persons eligible for care under title 36, chapter 29 who meet all requirements for such care. The board may employ physicians and other persons necessary to accomplish the purpose of this section.

B. In carrying out the powers and duties prescribed by §11-251, paragraph 5, and subsection A of this section, the board may contract with any qualified person to provide all or a part of the services required. Such contracts may be for a term of not more than ten years. All contracts for the operation of a county hospital for a term of more than two years shall let to the best responsible bidder after advertising for sealed bids in a newspaper andy by notice posted in three or more public places in the County at least ten

days before awarding the contract. The board may reject any and all bids. Amended by Laws 1981, 4th S.S., Ch. 1, §1; Laws 1982, Ch. 314, §; Laws 1982, Ch. 319, §1. Section 36-2901 et seq.

For text of section effective October 2, 1982, see §11-291, post.

§11-291. Hospitalization and medical care of indigent sick

Text of section effective October 2, 1983

A. Except as provided in §36-183.01 and title 36, chapter 29, the board of supervisors has the sole and exclusive authority to provide for the hospitalization and medical care of the indigent sick in the county, including long-term care and home health services as defined in §36-151, paragraph 3, to indigent persons and indigent persons under the supervision of a county corrections agency. Counties shall not be required to

provide services specified in title 36, chapter 29 to persons eligible for care under title 36, chapter 29 after the persons have been determined eligible pursuant to the county eligibility provided. Except as provided in §§ 36-2908 and 36-2909, until the final eligibility determination has been made and all applicable notice provisions have been complied with, the county shall provide services for indigent persons who are in fact eligible for care as required by Laws 1981, 4th special session, chapter 1, §16. A county may condition the provision of nonemergency care to a person who is otherwise eligible for county services on the completion by the person, or by a representative of the person on his behalf, of an application for eligibility for the Arizona health care cost containment system pursuant to title 36, chapter 29. The

board may employ physicians and other persons necessary to accomplish the purpose of this section.

B. In carrying out the powers and duties prescribed by §11-251, paragraph 5, and subsection A of this section, the board may contract with any qualified person to provide all or a part of the services required. Such contracts may be for a term of not more than ten years. All contracts for the operation of a county hospital for a term of more than two years shall be let to the best responsible bidder after advertising for sealed bids in a newspaper and by notice posted in three or more public places in the county at least ten days before awarding the contract. The board may reject any and all bids. Amended by Laws 1983, Ch. 304, §2, eff. Oct. 2, 1983. 1 Section 36-2901.

For text of section effective until October 2, 1982, see §11-291, ante.

ARTICLE 7. MEDICAL FACILITIES AND CARE OF INDIGENTS

Cross References

Income tax deduction, nursing care institution costs, see §43-1062. Income tax exemption, maintaining person in nursing or supervisory care institution, see §43-1023.

§11-291. Hospitalization and medical care of indigent sick.

A. Except as provided in §36-183.01 and title 36, chapter 29,[1] the board of supervisors has the sole and exclusive authority to provide for the hospitalization and medical care of the indigent sick in the county, including long-term care and home health services as defined in §36-151, paragraph 3, to indigent persons and, to the extent that such expenses are not covered by a third party payor, to indigent persons under the supervision of a county corrections agency.

For the purposes of this subsection, "third party payor" does not include the Arizona health care cost containment system.

B. Counties shall not be required to provide services specified in title 36, chapter 29 to persons eligible for care under title 36, chapter 29 after the persons have been determined eligible pursuant to the county eligibility process. Except as provided in §§ 36-2908 and 36-2909, until the final eligibility determination has been made and all applicable notice provisions have been complied with, the county shall provide services for indigent persons who are in fact eligible for care as required by § 11-291.01. A county may condition the provision of nonemergency care to a person who is otherwise eligible for county services on the completion by the person, or by a representative of the person on his

behalf, of an application for eligibility for the Arizona health care cost containment system pursuant to title 36, chapter 29. Beginning October 1, 1985, a county shall determine whether a person is eligible or ineligible for care provided pursuant to § 11-291.01 no later than it determines whether a person is eligible or ineligible for care pursuant to title 36, chapter 29.

C. The board may employ physicians and other persons necessary to accomplish the purpose of this section.

D. In carrying out the powers and duties prescribed by section 11-251, paragraph 5, and subsection A of this section, the board may contract with any qualified person to provide all or a part of the services required. Such contracts may be for a term of not more than ten years. All contracts for the operation of

a county hospital for a term of more than two years shall be let to the best responsible bidder after advertising for sealed bids in a newspaper and by notice posted in three or more public places in the county at least ten days before awarding the contract. The board may reject any and all bids.

E. For purposes of this section hospitals which render care to the indigent sick shall be reimbursed by the board of supervisors until October 1, 1987 as prescribed in § 36-2903.01, subsection I or J.

F. The county is entitled to a lien for the charges for hospital or medical care and treatment of an injured person for which it is responsible pursuant to subsection A of this section, on any and all claims for damages accruing to the person to whom hospital or medical service

is rendered, or to the legal representative of such person, on account of injuries giving rise to such claims and which necessitated such hospital or medical care and treatment. Recovery of charges pursuant to this subsection shall be in a manner as nearly as possible the same as the procedures prescribed in § 36-2915.

G. Except as provided in §§ 36-2908 and 36-2909, the county shall reimburse an ambulance company for the transportation to a hospital of a person in a medical emergency situation if that person's medical care is a county responsibility pursuant to § 11-291.01 and subsection A of this section and if such transportation is requested by a health care professional licensed under the provisions of title 32, chapter 13, 15, 17 or 25,[2] by a paramedic or emergency medical technician certified pursuant to title 36, chapter 21.1,[3] or by

a law enforcement officer or fire fighter. The county shall reimburse the ambulance company for services on a capped fee-for-service basis not to exceed the maximum amount determined by the administration pursuant to § 36-2904, subsection B. Amended by Laws 1981, 4th S.S., Ch. 1, § 1; Laws 1982, Ch. 314, § 1; Laws 1982, Ch. 319, § 1; May 5, 1984; Laws 1985, Ch. 316, § 1, eff. May 10, 1985.

1. Section 36-2901 et seq.

2. Section 32-1401 et seq., 32-1601 et seq., 32-1801 et seq. or 32-2501 et seq.

3. Section 36-2201 et seq.

Arizona Revised Statutes Annotated

11-297. Hospital treatment; application; affidavit; indigency standards; erroneous determinations; definitions

A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under this article without first filing with the board or supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as defined by subsection B of this section.

B. For the purposes of this section, an "indigent" is a resident of the county who:

1. Does not have an annual income in excess of:

(a) Two thousand five hundred dollars, for one individual.

(b) An additional thirty-three and one-third per cent of the base identified in subdivision (a) of this paragraph if living with a dependant member of the family household, or if married and living with a spouse.

(c) An additional seventeen percent of the base identified in subdivision (a) of this paragraph for each additional dependent member of the family household.

Annual income shall be calculated by multiplying by four the applicant's income for the three months immediately prior to the application for eligibility for the Arizona health care cost containment system pursuant to title 36, chapter 29.

2. Does not have resources of all persons in the household, including but not limited to equity in a house or car, with a new worth in excess of thirty thousand

dollars, with no more than five thousand dollars cash or other liquid assets.

3. Has not, within three years prior to filing an application for eligibility for the Arizona health care cost containment system pursuant to title 36, chapter 29, transferred or assigned real or personal property with intent to render himself eligible for such system.

C. For the purposes of subsection B of this section, each applicant shall provide a statement of the amount of personal and real property in which the applicant has an interest, a statement of all income which the applicant received during the three months immediately prior to the application, and a statement of any personal and real property assigned or transferred by the applicant within a three year period immediately prior to filing an application for eligibility for the Arizona

health care cost containment system pursuant to title 36, chapter 29 and any further information determined through rules and regulations by the director of the Arizona health care cost containment system administration.

A.R.S. § 11-297.01 -- Relevant portions of the statute are identical to the statute effective May 10, 1985 and in the previous version.

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Arizona Revised Statutes Annotated

§ 11-297.01. Care at private or university hospital

A. An indigent patient qualified for care under the terms of this article may be placed in a private hospital or hospital operated by a university:

1. When the county does not maintain a county hospital.

2. When the county hospital is too overcrowded to accommodate the patient.

3. When the patient requires a service provided by a private hospital or hospital operated by a university that is not provided by the county hospital.

B. Subject to the same reimbursement level limitation as prescribed in § 36-2903.01, subsection I or J, the county shall be liable for payment of all costs retroactive to the inception of treatment incurred by a private hospital or hospital operated by a university arising from

emergency treatment and medical care administered at such hospital for a patient qualified for such care and treatment under the provisions of this article on compliance with subsection C of this section and in either of the following circumstances:

1. When the emergent condition of the patient is such that is it deemed medically inadvisable to transport the patient from the private hospital or hospital operated by a university for further treatment.

2. When the county does not move the patient from the private hospital or hospital operated by a university within twelve hours after being notified by the private hospital or hospital operated by a university authorities of the location and condition of the patient.

C. To be entitled to recover pursuant to this section a private hospital or

hospital operated by a university shall give the county oral or written notice of the location, name, address and condition of the patient within twelve hours after the time the patient is admitted for treatment, unless the hospital demonstrates that the patient or another person acting on behalf of the patient submitted evidence of insurance coverage to the hospital which was later determined to be invalid for the purpose for which the patient was admitted and the hospital documents in the patient's records that evidence of insurance was submitted. If a hospital fails to give notice within the twelve hour period, the hospital is entitled to payment from the county for treatment which is rendered to the patient from the time notice is actually given to the county until the time the patient is discharged or transferred to another facility.

Amended by Laws 1984, Ch. 372, § 6, eff. May 5, 1984; Laws 1985, Ch. 316, § 6, eff. May 10, 1985.

Arizona Administrative Code

R9-22-307. AHCCCS family household and relationship

A. For the purposes of AHCCCS, the following individuals shall be included on one AHCCCS application and shall be considered one family household. Except as indicated in B. and C. of this Section, individuals listed below shall reside in one common residence. Categorically eligible persons shall not be considered part of the indigent or medically needy family household.

1. All married couples, regardless of age, living together without dependent children.

2. All married couples, and their natural or adoptive dependant children; all natural and adoptive children of a natural or adoptive dependent child(ren) of either one or both spouses.

3. A married individual, without dependent children and not living with spouse. Natural or adoptive parents or specified relatives shall not be considered part of this family household.

4. A married individual, not living with his or her spouse; and, his or her natural or adoptive dependent children and any children of a natural or adoptive dependent child. Natural or adoptive parents or specified relatives shall not be considered as part of this family household.

5. A separated or divorced individual without dependent children. Natural or adoptive parents or specified relatives shall not be considered as part of this family household.

6. A divorced or separated individual, and his or her natural or adoptive dependent children and any

children of a natural or adoptive dependent child. Natural or adoptive parents or specified relatives shall not be considered as part of the family household.

7. An unmarried adult or emancipated minor without any dependent children.

8. An unmarried adult(s) or emancipated minor and his or her or their natural or adoptive dependent children and any children of the natural or adoptive dependent child. Unmarried persons without common dependent children shall be a separate AHCCCS family household.

9. A specified relative and the dependent children who live together in one common residence. A dependent child shall be considered on the application of the specified relative.

B. A dependent child, absent from the home because of Arizona school attendance or because of residing in an Arizona

residential facility due to a disabling condition, shall be considered a member of the family household unless the school or facility is located out of state or the dependent child is residing with the other parent. If the child is residing with the other parent, the child shall be included on the application of the parent with whom the child resides.

C. Spouses separated solely because one is residing in a licensed nursing care institution, licensed supervisory care facility, or certified adult foster care facility, because of a mental or physical disabling condition verified by doctors orders, shall apply together as one family household on a single AHCCCS application.

D. A minor who is not emancipated or expressly emancipated shall only be approved for AHCCCS on an application submitted by:

1. Parents, or

2. Specified relative, or

3. Legal guardian, or

4. Authorized agency appointed through court proceedings as established by A.R.S. § 8-538, et seq.

E. Relationship of family household members shall be established and verified prior to the eligibility determination according to requirements specified in R9-22-327.

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